



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2022-0440]

RIN 1625-AA00

### Safety Zone; Upper Mississippi River, Cape Girardeau, MO

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters of the Upper Mississippi River extending from mile marker (MM) 49 to MM 50 on the Upper Mississippi River near Cape Girardeau, MO. The safety zone is needed to protect personnel and vessels from potential hazards due to a partially sunken cement barge in the navigational channel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through June 10, 2022. For the purposes of enforcement, actual notice will be used from May 11, 2022 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0440 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email MST2 Evan Dawson, MSU Paducah, U.S. Coast Guard; telephone 270-442-1621 ext. 2135, email STL-SMB-MSUPaducah-WWM@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i><b>Federal Register</b></i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable. On May 8, 2022 a cement barge became partially sunk in the navigation channel of the Upper Mississippi River at MM 49.5 causing a hazard to navigation. The safety zone must be established immediately to protect people and vessels from hazards associated with the partially sunken barge. It is impracticable to publish an NPRM because we must establish this safety zone by May 11, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the sunken barge

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated a partially sunken barge in the navigation channel will be a safety concern for anyone transiting between MM 49 and MM 50 on the Upper Mississippi River. The safety zone is needed to protect personnel and vessels from potential hazards due to a partially sunken barge in the navigation channel.

#### **IV. Discussion of the Rule**

This rule establishes a temporary safety zone from May 11, 2022 through June 10, 2022, or until the hazard has been mitigated. The temporary safety zone will cover all navigable waters of the Upper Mississippi River extending from mile marker (MM) 49 to MM 50. The COTP will terminate the enforcement of this temporary safety zone before June 10, 2022 if the hazards associated with the partially sunken barge have been resolved. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The COTP may be contacted by telephone at 502-779-5422 or the on scene designated representative can be reached via VHF-FM channel 16.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration. This temporary safety zone will restrict vessel traffic from entering or transiting within a 1 mile area of navigable waters on the Upper Mississippi River between MM 49 and MM 50. While in effect, this rule would allow vessels to seek permission to enter the zone. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM channel 16 about the temporary safety zone. Additionally, the temporary safety zone will only be in effect while the partially sunken barge remains a hazard to navigation.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small

Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting until June 10, 2022 or until salvage operations of the partially sunken barge are complete. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination will be produced. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165 REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T08-0440 to read as follows:

**§ 165.T08-0440 Safety Zone; Upper Mississippi River, Cape Girardeau, MO**

(a) *Location.* The safety zone will cover all navigable waters of the Upper Mississippi River between mile marker (MM) 49 and MM 50.

(b) *Enforcement period.* This section will be enforced from May 11, 2022 and will continue through June 10, 2022 or until the hazards associated with the partially sunken barge have been resolved.

(c) ***Regulations.*** (1) In accordance with the general regulations in §165.23 of this part, entry of vessels or persons into the zone during demolition or salvage operations are prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

(2) If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative while proceeding through the zone.

Dated: May 11, 2022

J. S. Franz,  
Commander, U.S. Coast Guard,  
Acting Captain of the Port Sector Ohio Valley.

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